



## DEPARTMENT OF VETERANS AFFAIRS

8320--01

### 38 CFR Part 17

#### RIN 2900-AQ74

#### **Educational Assistance for Certain Former Members of the Armed Forces**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations that govern scholarships to certain health care professionals. This rulemaking would implement the mandates of the Consolidated Appropriations Act 2018 by establishing a pilot program to provide educational assistance to certain former members of the Armed Forces for education and training leading to a degree as a physician assistant.

**DATES:** Comments must be received on or before **[insert date 60 days after the date of publication in the FEDERAL REGISTER]**.

**ADDRESSES:** Written comments may be submitted through

<http://www.Regulations.gov>; by mail or hand-delivery to: Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1064, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free telephone number.) Comments should indicate that they are submitted in response to “RIN 2900-AQ74- Educational Assistance for Certain Former Members of

the Armed Forces.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free telephone number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Scot Burroughs, Acting Director  
Physician Assistant Services. 810 Vermont Avenue, NW, Washington DC 20420,  
[Scot.burroughs@va.gov](mailto:Scot.burroughs@va.gov), (319) 358-0581 extension 4860. (This is not a toll-free  
number.)

**SUPPLEMENTARY INFORMATION:** On March 23, 2018, section 246 of Public Law 115-141, the Consolidated Appropriations Act, 2018, established a pilot program that would provide educational assistance to certain former members of the Armed Forces for education and training leading to employment as a VA physician assistant, the Educational Assistance for Certain Former Members of the Armed Forces (EACFMAF) program. See also 38 United States Code (U.S.C.) 7601 Note (2018) Physician Assistant Education and Training Pilot Program for Former Members of the Armed Forces. Several branches of the Armed Forces train individuals to perform the duties of a physician assistant without the required educational training. The EACFMAF would allow such individuals the opportunity to complete their education and training in order to be employed by VA as a physician assistant. The EACFMAF would increase access

to VA health care by utilizing a veteran workforce that has received training as a physician assistant in the Armed Forces. The Consolidated Appropriations Act sets forth the eligibility criteria, the types of available funding, established an agreement to be met by the participants, as well as the consequences for a breach in such agreement. This proposed rule would establish the regulations needed to carry out the EACFMAF. Immediately following title 38 of the Code of Federal Regulations (CFR) 17.531, we would add a new undesignated center heading titled “Educational Assistance for Certain Former Members of the Armed Forces” and add new §§ 17.535 through 17.539 as discussed in further detail below.

#### Section 17.535 Purpose.

Proposed § 17.535 would establish the purpose for §§ 17.535 through 17.539, which would establish the EACFMAF program. We would state that the “EACFMAF will provide funding to certain former members of the Armed Forces for the education and training leading to employment as a VA physician assistant.” This would be consistent with in section 246(a) of the Consolidated Appropriations Act, 2018.

#### Section 17.536 Eligibility.

Proposed § 17.536 would restate the eligibility requirements for participants in the EACFMAF found in section 246(b) of the Consolidated Appropriations Act, 2018. Although section 246(b) of the Consolidated Appropriations Act, 2018 does not indicate that the type of discharge from service that the individual must have in order to participate in the EACFMAF, we believe that the intent of the Public Law is to assist those individuals who were discharged under conditions other than dishonorable. This

is the same condition of the definition of the term “veteran” in 38 U.S.C. 101(2). We would mirror this language in proposed § 17.536 by stating that an individual must be a former member of the Armed Forces who was discharged or released therefrom under conditions other than dishonorable.

We would also state in proposed paragraph (a) that an individual is eligible to participate in the EACFMAF if they meet one of the following criteria while they were a member of the armed forces. The first criteria is that the individual has medical or military health experience gained while serving as a member of the Armed Forces. This military experience would be determined by the individual’s DD214, Military Occupational Specialty, or other official documentation. The second criteria would be that the individual has received a certificate, associate degree, baccalaureate degree, master’s degree, or post baccalaureate training in a science relating to health care. Such degrees may include majors in biology, anatomy and physiology, and other such related fields. The third criteria would be that the individual has participated in the delivery of health care services or related medical services, including participation in military training relating to the identification, evaluation, treatment, and prevention of disease and disorders. This criterial would include direct patient health care and training in the delivery of such health care.

We would also establish the school requirements that the individual must meet in order to be eligible for the EACFMAF. The requirements would be that the individual must be unconditionally accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State; be pursuing a degree leading to employment as a physician assistant; be a citizen of the United States; and submit an application to

participate in the Scholarship Program together with a signed contract. These school requirements are in alignment with similar VA scholarship programs. See 38 CFR 17.602.

Section 17.537 Award procedures.

Proposed paragraph (a) would restate the priority for selection of participants for the EACFMAF found in section 246(d)(2) of the Consolidated Appropriations Act, 2018. Also, under section 401(a) of Public Law 115-182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, Congress mandated VA to “develop criteria to designate medical centers, ambulatory care facilities, and community based outpatient clinics of the Department of Veterans Affairs as underserved facilities.” In addition to stating that a VA medical facility located in a community that is designated as medically underserved under 42 U.S.C 245b(b)(3)(A), would include those VA medical facilities that VA has determined as medically underserved. Given section 401 of the VA Mission Act of 2018 was established after the Consolidated Appropriations Act of 2018, VA believes that it is also necessary to give preference to those VA medical facilities. We would, therefore, state that VA would give priority to eligible individuals who “agree to be employed as physician assistants in a VA medical facility that: Is located in a community that is designated as a medically underserved population under 42 U.S.C. 254b(b)(3)(A); Is designated by VA as a medically underserved facility; and Is in a State with a per capita population of veterans of more than five percent, according to the National Center for Veterans Analysis and Statistics and the United States Census Bureau.”

Proposed paragraph (b) would restate the type of educational assistance that would be available to eligible individuals, which is found in section 246(e) of the Consolidated Appropriations Act, 2018. We would state that VA will provide educational assistance to individuals who participate in the EACFMAF to cover the costs of such individuals obtaining a master's degree in physician assistant studies or similar master's degree for a period of one to three years. We would say or similar master's degree because most educational programs are graduate programs leading to the award of master's degrees in either physician assistant studies (MPAS), Health Science (MHS), or Medical Science (MMSc), and require a bachelor's degree for entry. Keeping in line with the administration of similar VA scholarship programs managed by 38 U.S.C. 7601, we would also state that the payments to scholarship participants are exempt from Federal taxation and that the payments will consist of: Tuition and required fees; Other educational expenses, including books and laboratory equipment. See 38 CFR § 17.606(a).

#### Section 17.538 Agreement and obligated service.

Proposed § 17.538 would establish the agreement and obligated service that an eligible individual must adhere to comply with the EACFMAF. Section 246(f) of the Consolidated Appropriations Act, 2018 states that VA shall enter into an agreement with each individual participating in the pilot program in which such individual agrees to be employed as a physician assistant for the Veterans Health Administration for a period of obligated service to be determined by the Secretary. Proposed § 17.538(a) would specify the details of the agreement. We would state that the eligible individual must agree to maintain enrollment, attendance, and acceptable level of academic standing as

defined by the school; Complete a master's degree in physician assistant studies or similar master's degree; and Be employed as a full-time clinical practice employee in VA as a physician assistant for a period of obligated service for one calendar year for each school year or part thereof for which the EACFMAF was awarded, but for no less than three years. For example, if VA awarded an individual EACFMAF for two and a half years, the individual's period of obligated service would be three years. Although these requirements are not specifically stated in section 246(f) of the Consolidated Appropriations Act, 2018, this language is consistent with the agreement of similar scholarship programs. See 38 CFR 17.632.

Proposed § 17.538(b)(1) would specify the requirements of the obligated service. An eligible individual's obligated service would commence on the date that such individual begins full-time permanent employment with VA as a clinical practice employee as a physician assistant, but no later than 90 days after the date that the eligible individual completes a master's degree in physician assistant studies or similar master's degree. This requirement is consistent with similar scholarship programs. See 38 CFR 17.607(b). Because of changing access needs within VA, VA reserves the right to make the final decision as to where an individual would perform their period of obligated service that meets the requirements of section 246. We would state this condition in proposed § 17.538(b)(2). Also, the location of the obligated service may not necessarily be within the commuting area of where the eligible individual resides. We would, therefore, state in proposed § 17.538(b)(2) that VA reserves the right to make final decisions on the location and position of the obligated service. An eligible individual who receives an EACFMAF must be willing to relocate to another geographic

location to carry out their service obligation. The relocation of the eligible individual would be at such individual's expense. This language is consistent with similar scholarship programs. See 38 CFR 17.607(d).

Section 17.539 Failure to comply with terms and conditions of agreement.

Proposed paragraph § 17.539(a) would establish the consequences for failure to satisfy the terms and conditions of the participant's agreement. The breach of the terms of agreement are stated in section 246(g) of the Consolidated Appropriations Act, 2018. We would restate section 246(g) in proposed paragraph § 17.536(a) with minor technical edits for clarity. We would state that If an eligible individual who accepts funding for the EACFMAF fails to satisfy the terms of agreement, the United States is entitled to recover damages in an amount equal to the total amount of EACFMAF funding paid or is payable to or on behalf of the individual, reduced by the total number of obligated service days the individual has already served minus the total number of days in the individual's period of obligated service.

Section 246 of the Consolidated Appropriations Act, 2018 does not establish a time frame for when an eligible individual will repay the amount of damages when such eligible individual breaches their terms of agreement. We would mirror the repayment period language from similar scholarship programs in proposed § 17.539(b). See 38 U.S.C. 7617(c)(2) and 38 CFR 17.610(c). We would state that an eligible individual will pay the amount of damages that the United States is entitled to recover under this section in full to the United States no later than one year after the date of the breach of the agreement. Because VA has provided the repayment requirements up front, we believe that a one-year period is sufficient time for the individual to repay the amount of



funds granted by the EACFMAF and such time frame is consistent with similar scholarship programs.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule includes provisions constituting an amendment of an existing collection of information under the Paperwork Reduction Act of 1995 that require approval by the OMB. The existing OMB control number that will be amended by this action is 2900-0793. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Proposed 38 CFR 17.538 contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection of information as requested, VA will

immediately remove the provision containing a collection of information or take such other action as is directed by OMB.

Comments on the collection of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1064, Washington, DC 20420; fax to (202) 273-9026; or through [www.Regulations.gov](http://www.Regulations.gov). Comments should indicate that they are submitted in response to “RIN 2900-AQ74 Educational Assistance for Certain Former Members of the Armed Forces.”

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if the comment is received within 30 days of publication. This does not affect the 60-day deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;

- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collections of information contained in 38 CFR 17.538 are described immediately following this paragraph, under their respective titles. For the proposed collection of information below, VA used general wage data from the Bureau of Labor Statistics (BLS) to estimate the respondents' costs associated with completing the information collection. According to the latest available BLS data, the mean hourly wage of full-time wage and salary workers was \$24.98 based on the BLS wage code – "00-0000 All Occupations." This information was taken from the following website:

[https://www.bls.gov/oes/2018/may/oes\\_nat.htm](https://www.bls.gov/oes/2018/may/oes_nat.htm) May 2018

Title: Educational Assistance for Certain Former Members of the Armed Forces.

OMB Control No.: 2900-0793

CFR Provision: 38 CFR 17.538

Summary of collection of information: The EACFMAF provides funding for the medical education of eligible individuals who enroll in a master's degree in physician

assistant studies or similar master's degree program. As part of the EACFMAF, the eligible individual agrees to a period of obligated service with VA for a period of no less than 3 years. The information collected under this section would comprise an agreement between VA and the eligible individual who accepts funding for the EACFMAF.

Description of the need for information and proposed use of information: The agreement between VA and the eligible individual would hold the eligible individual accountable for upholding the terms and conditions of the agreement and alert the eligible individual of the consequences of a breach in the agreement.

Description of likely respondents: Eligible individuals who are accepted for participation in the EACFMAF.

Estimated number of respondents per month/year: 100.

Estimated frequency of responses per month/year: 1 per year.

Estimated average burden per response: 4 hours.

Estimated total annual reporting and recordkeeping burden: 400 hours.

Estimated cost to respondents per year: VA estimates the total cost to all respondents to be \$ 9,992 per year (400 burden hours x \$24.98 per hour). Legally, respondents may not pay a person or business for assistance in completing the information collection. Therefore, there are no expected overhead costs to respondents for completing the information collection.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the proposed rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is

published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 through Fiscal Year to Date.

This proposed rule is not subject to the requirements of E.O. 13771 because this rule is not significant under E.O. 12866.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

#### Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Health care, Health facilities, Health professions, Scholarships and fellowships.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on July 20, 2020, for publication.

***Consuela Benjamin,***

Regulations Development Coordinator,  
Office of Regulation Policy & Management,  
Office of the Secretary,  
Department of Veterans Affairs.

For the reasons set forth in the preamble, we propose to amend 38 CFR part 17 as follows:

## PART 17 – MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

\* \* \* \* \*

Sections 17.535 through 17.539 are also issued under Public Law 115-141, sec. 246.

\* \* \* \* \*

2. Add an undesignated center heading immediately following § 17.531 and new §§ 17.535 through 17.539 to read as follows.

EDUCATIONAL ASSISTANCE FOR CERTAIN FORMER MEMBERS OF THE ARMED FORCES.

17.535 Purpose.

17.536 Eligibility.

17.537 Award procedures.

17.538 Agreement and obligated service.

17.539 Failure to comply with terms and conditions of agreement.

### § 17.535 Purpose.

The purpose of §§ 17.535 through 17.539 is to establish the Educational Assistance for Certain Former Members of the Armed Forces (EACFMAF). The



EACFMAF will provide a scholarship to certain former members of the Armed Forces for the education and training leading to employment as a VA physician assistant.

§ 17.536 Eligibility.

(a) Military and Training requirements. An individual is eligible to participate in the EACFMAF if such individual is a former member of the Armed Forces who was discharged or released therefrom under conditions other than dishonorable and meets the following criteria:

(1) Has medical or military health experience gained while serving as a member of the Armed Forces;

(2) Has received a certificate, associate degree, baccalaureate degree, master's degree, or post baccalaureate training in a science relating to health care; or

(3) Has participated in the delivery of health care services or related medical services, including participation in military training relating to the identification, evaluation, treatment, and prevention of disease and disorders.

(b) School and Individual requirements. To be eligible for the EACFMAF, an applicant must:

(1) Be unconditionally accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State;

(2) Be pursuing a degree leading to employment as a physician assistant;

(3) Be a citizen of the United States; and

(4) Submit an application to participate in the Scholarship Program together with a signed contract.

§ 17.537 Award procedures.

(a) Priority. In awarding EACFMAF, VA will give priority to eligible individuals who agree to be employed as physician assistants in a VA medical facility that:

(1) Is located in a community that is designated as a medically underserved population under 42 U.S.C. 254b(b)(3)(A);

(2) Is designated by VA as a medically underserved facility; and

(3) Is in a State with a per capita population of veterans of more than five percent, according to the National Center for Veterans Analysis and Statistics and the United States Census Bureau.

(b) Amount of funds. VA will provide a scholarship to individuals who participate in the EACFMAF to cover the costs of such individuals obtaining a master's degree in physician assistant studies or similar master's degree for a period of one to three years. All such payments to scholarship participants are exempt from Federal taxation. The payments will consist of:

(i) Tuition and required fees;

(ii) Other educational expenses, including books and laboratory equipment.

§ 17.538 Agreement and obligated service.

(a) Agreement. Each eligible individual who accepts funds from the EACFMAF will enter into an agreement with VA where the eligible individual agrees to the following:

(1) Maintain enrollment, attendance, and acceptable level of academic standing as defined by the school;

(2) Complete a master's degree in physician assistant studies or similar master's degree; and

(3) Be employed as a full-time clinical practice employee in VA as a physician assistant for a period of obligated service for one calendar year for each school year or part thereof for which the EACFMAF was awarded, but for no less than three years.

(b) Obligated service. (1) General. An eligible individual's obligated service will begin on the date on which the eligible individual begins full-time permanent employment with VA as a clinical practice employee as a physician assistant, but no later than 90 days after the date that the eligible individual completes a master's degree in physician assistant studies or similar master's degree, or the date the eligible individual becomes licensed in a State and certified as required by the Secretary, whichever is later. VA will actively assist and monitor eligible individuals to ensure State licenses and certificates are obtained in a minimal amount of time following graduation. If an eligible individual fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the eligible individual is considered to be in breach of the acceptance agreement.

(2) Location and position of obligated service. VA reserves the right to make final decisions on the location and position of the obligated service. An eligible individual who receives an EACFMAF must be willing to relocate to another geographic location to carry out their service obligation.

(The Office of Management and Budget has approved the information collection requirements in this section under control number XXXX–XXXX.)

§ 17.539 Failure to comply with terms and conditions of agreement.

(a) Participant fails to satisfy terms of agreement. If an eligible individual who accepts funding for the EACFMAF fails to satisfy the terms of agreement , the United States is entitled to recover damages in an amount equal to the total amount of EACFMAF funding paid or is payable to or on behalf of the individual, reduced by the total number of obligated service days the individual has already served minus the total number of days in the individual's period of obligated service.

(b) Repayment period. The eligible individual will pay the amount of damages that the United States is entitled to recover under this section in full to the United States no later than one year after the date of the breach of the agreement.

[FR Doc. 2020-15989 Filed: 7/24/2020 8:45 am; Publication Date: 7/27/2020]